

STATE OF ALASKA

IBLA 75-320

Decided June 11, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting State selection application, A-061057, in part.

Affirmed.

1. Alaska: Statehood Act -- Alaska: Land Grants and Selections: Generally -- Power: Federal Power Commission -- State Selections -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Power Sites -- Withdrawals and Reservations: Revocation and Restoration.

The inclusion of lands belonging to the United States in a proposed power project pursuant to section 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

2. Alaska: Land Grants and Selections: Generally -- Alaska: Statehood Act -- State Selections -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Power Sites

A selection application by the State of Alaska must be rejected with respect to those public lands which are reserved or withdrawn from entry or other form of

disposal under the public land laws of the United States and cannot be held open pending a possible future change of the status of the land.

APPEARANCES: Dale P. Tubbs, Acting Director, State of Alaska, Department of Natural Resources, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The State of Alaska appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated December 26, 1974, amending a prior decision of the same office and rejecting the state selection application (A-061057) in part as to certain lands in power Project 1051 because said lands were reserved from entry or other disposal. Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1970).

Appellant alleges as grounds for appeal that a petition for restoration of the lands in the project has been filed with the Federal Power Commission (FPC) and, in effect, requests a stay of the decision until the FPC acts on its petition.

[1] Section 24 of the Federal Power Act of June 10, 1920, supra, provides that any lands of the United States included in any proposed project under the Act " * * [S]hall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress." The reservation of such lands from disposal is tantamount to a withdrawal of the lands from the operation of the public land laws and, until such time as the withdrawal is revoked and there has been a restoration to entry, the land affected by the withdrawal is not subject to appropriation or disposal. Juan N. Menchaca, 14 IBLA 212 (1974); John C. Amonson, 8 IBLA 346 (1972).

[2] In these circumstances, applications must be rejected. An application cannot be held pending possible future availability of the land where approval of the application is prevented by withdrawal or reservation of lands. 43 CFR 2091.1 (1974). Therefore, we must deny the State's request for suspension of the application pending the FPC consideration and determination.

We note that section 6(g) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 341, 48 U.S.C. prec. § 21 note (1970), provides in part with respect to the State's selection of lands that:

* * * Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection * * *.

Thus, the State has not shown it will be prejudiced by affirmance of the BLM decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

